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No. 90-1162

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1990

SILAS V. CROSS, VERNON CROSS,

Petitioners,

v.

STATE OF WASHINGTON; HON. BOOTH GARDNER; BRIAN BOYLE, COMMISSIONER OF PUBLIC LANDS, [Washington State University, its Board of Regents and Secretary],

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. When an Indian treaty and subsequent legislation expressly authorize the sale of allotment land, do individual Indians have a right to recover title to allotment land sold by a relative in 1938 to a good-faith, non-Indian purchaser?

2. Is a claim by individual Indians that an act of Congress is an unconstitutional deprivation of a treaty right to allotment land barred for failure to join the United States pursuant to 25 U.S.C. § 345?

3. Are claims by individual Indians to patented allotment land sold by a relative in 1938 subject to state law defenses pursuant to 25 U.S.C. § 347?

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Respondents State of Washington; Hon. Booth Gardner; Brian Boyle, Commissioner of Public Lands; Washington State University, its Board of Regents, and its

Secretary,[1] respectfully request the Court to deny the Petition for Writ of Certiorari seeking review of the Ninth Circuit Court of Appeals opinion in this case.[2] That opinion is reported at 911 F.2d 341 (1990).

STATEMENT OF FACTS

Given petitioners' approach to stating the facts in their petition we are compelled to provide a restatement of the facts.

The Puyallup Indian Reservation was created by the Medicine Creek Treaty of 1854. 10 Stat. 1132. The Reservation was enlarged by Executive Order following the Fox Island Conference of 1856. The Medicine Creek Treaty provides in Article 6 for allotment of reservation land to individual Indians. (Appendix A-1.) (Article 6 of the Treaty with the Omahas, referred to therein, is set out in Appendix A-1-2.)

In 1884, Congress provided for the survey of the Puyallup Reservation for the purpose of assigning lots to individual Indians or families. 23 Stat. 76. (Text of key statutes is in Appendix A.) Petitioners' ancestor, Jimmie Cross, received a patent from the United States for land allotted to him pursuant to Article 6 of the Treaty of Medicine Creek. (Pet., Appendix A-64-5.)

Shortly thereafter, Congress enacted the General Allotment Act of 1887, 24 Stat. 388, which authorized the allotment of other Indian land throughout the United States. The Act also established the practice of setting a limit, then 25 years, on restrictions on alienation of lands allotted pursuant to the Act. (Now codified, as amended, in 25 U.S.C. § 331 *et seq.*)

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[1]Respondents agree that the Ninth Circuit caption is incorrect. *See* Pet. 1.

[2]Respondents believe that the Petition for Writ of Certiorari has not been perfected within the time required to properly invoke the jurisdiction of this Court. Rule 13; 28 U.S.C. § 2101(c). The judgment of the Ninth Circuit Court of Appeals was entered August 15, 1990. The Petition was not perfected until February 4, 1990, when it was served on Respondents. At the time this brief was written, this issue was before the clerk of the court pursuant to Rule 13.3.

In 1893, Congress limited alienation restrictions on allotments to Puyallup Indians to ten years from the date of the legislation. 27 Stat. 633. In 1904, Congress acknowledged the expiration of that ten-year restriction period and confirmed that the restrictions on alienation of land allotted to Puyallup Indians were now removed. 33 Stat. 565.

Earlier, the Washington State Legislature, pursuant to Article 6 of the Omaha and Medicine Creek treaties, empowered Indians to alienate allotted lands. The Washington Act was to take effect after the removal of all restrictions on alienation by the Congress of the United States. 1890 Wash. Laws 499-501.

The essential facts regarding chain of title are not in dispute. (Pet. 6-7, A-72-3.) Beginning in 1919, a series of transactions occurred with respect to the Jimmie Cross patented land, including transfer by probate and warranty deeds. As a result of this series of transactions, the patented property was eventually included in the estate of Jimmie Cross, and upon his death his interest in the property was distributed in 1932, one-half each to surviving sons, Silas and George Cross.

In 1938, George Cross and his wife conveyed two parcels to Ben L. Andre, a non-Indian. In 1941, Ben L. Andre conveyed these two parcels to the state of Washington. These 1938 transactions are the focus of petitioners' ejectment claim. (CR 8, Amended Complaint, para. 3.2, pp. 19-20.)

Since 1941, the subject property has been used by Washington State University as part of an agricultural research station. Washington State University conducts important research at this facility that would be severely curtailed if the land is lost. (CR 39.)

This lawsuit was filed August 12, 1988, some 84 years after all restraints on alienation of the Cross patent were removed by Congress, and 47 years after it was acquired by the State for use by Washington State University. Petitioners and their relatives have lived adjacent to the Washing-

ton State University property over this entire period. (CR 8, Amended Complaint, para. 2.8 and 2.14, pp. 9-10, 12.)

REASONS WHY THE PETITION SHOULD BE DENIED

I. Petitioners' Arguments Are Contrary to the Treaty, the Statutes and the Law.

A. The Treaty of Medicine Creek Contemplates the Eventual Alienation of Allotted Land.

The Treaty of Medicine Creek of 1854 provides for the allotment of land reserved to the Puyallup Tribe to individual Indians and the possible alienation of such lands. Article 6 of the Medicine Creek Treaty incorporates Article 6 of the Treaty with the Omaha. 10 Stat. 1043. The relevant language in the Medicine Creek Treaty states:

> And he [the President] may further, at his discretion, cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. * * *

Article 6 of the Omaha Treaty states:

> And the President may, at any time, in his discretion, after such person or family has made a location upon the land assigned for a *permanent home*, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and *shall be exempt from levy, sale or forfeiture, which conditions shall continue in force, until a State constitution embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions.* * * *

(Emphasis added.)

Petitioners argue that use of the term "permanent home" in the Medicine Creek Treaty precludes any interpretation of the treaties which would permit the eventual sale, or alienation, of allotments. Pet. 11-17. Petitioners' argument, however, ignores the clear language of the treaties.

The term "permanent home" is used in both Article 6 of the Treaty of Medicine Creek and the incorporated provisions of the Omaha Treaty. Petitioners argue at length that the restrictions on "aliening" or "leasing" in Article 6 of the Omaha Treaty show no intent to allow the sale, or alienation, of allotments. Pet. 7-11. They neglect to address, however, the succeeding clause of the same sentence in Article 6 of the Omaha Treaty which allows for the *sale* of allotments once restrictions are removed by a state legislature.[2] Obviously, use of the term "permanent home" in the treaties was not viewed as being inconsistent with the possible eventual sale of the allotments. Clearly, it was contemplated by the parties to the treaty that allotments could eventually be sold.

Ambiguous treaty language is to be construed in favor of the Indians. However, clear expressions of intent must be given effect. *DeCoteau v. District County Court*, 420 U.S. 425 (1975). From both the language of the treaties and the interpretation given to them by Congress, discussed below, it is clear that the eventual alienation of allotment lands was fully contemplated.

B. The Patent to Jimmie Cross Conveyed Fee Title Subject Only to Legislative Removal of Restrictions on Alienation.

Petitioners argue that the patent to Jimmie Cross conveyed only a right of use and occupancy in the land, not fee title which could be sold. Pet. 12, 14-15. They are wrong.

The nature of the patents to Puyallup Tribal members was determined in *United States v. Kopp*, 110 F. 160 (W.D.

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[2]This was done by Washington State in 1890. 1890 Wash. Laws 499-501.

Wash. 1901), not long after these patents were issued. There the court held, at 165:

> [E]ach patent conveyed a title in fee simple, subject to forfeiture upon conditions subsequent, and with a restriction upon the right of alienation for a period to be determined by future legislative enactments.

The *Kopp* court specifically rejected the contention that the United States continued to hold the allotted lands in trust. 110 F. at 165-6.

Eells v. Ross, 64 F. 417 (9th Cir. 1894), did not hold, as petitioners assert, that the Puyallup Reservation allotments could not be sold. Pet. 15-16. The court only held that until the restraints on alienation imposed by the General Allotment Act of 1887 expired, allotments were subject to some federal control.[3] At page 420, the court stated:

> From its relations to the title, and from the terms of the treaty, we think the government had the power to make such conditions, and that they were not destroyed by making the Indians citizens. Such effect cannot be deduced from the act of 1887, for, if congress could do so, congress did explicitly clog the title with a condition of non-alienation for 25 years, and absolutely nullified all contracts made, touching the same, before the expiration of such time.

As noted in *Kopp*, quoted above, several restrictions on alienation were attached to patents issued to Puyallups such as Jimmie Cross. As discussed below, all of these restrictions were removed by 1904. Removal of restraints vests fee title to an allotment. *See United States v. Waller*, 243 U.S. 452 (1917).

C. Congress Expressly Removed Any Restraints on Selling Land Allotted to Puyallup Indians.

The provisions incorporated into the Medicine Creek Treaty regarding allotments and their alienation have sev-

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[3] 27 Stat. 633 changed to ten years the limitation on alienation of allotments to Puyallup Indians.

eral times been supplemented and amended by Congress. The General Allotment Act of 1887, 24 Stat. 388, established the policy of setting limited restraints on alienation of allotted lands, there 25 years. Congress was more liberal with respect to lands allotted to Puyallup Indians.

In 1893, Congress limited restraints on alienation of allotments to Puyallup Indians to ten years from the date of the legislation, 27 Stat. 633. In relevant part, 27 Stat. 633 provides:

> *And provided further*, That the Indian allottees shall not have power of alienation of the allotted lands not selected for sale by said Commission for a period of ten years from the date of passage of this act and no part of the allotted land shall be offered for sale until * * * .

The expiration of this ten-year restriction was expressly recognized by Congress in 1904 and all restraints on alienation were removed. 33 Stat. 565. It is quite clear from this series of statutes that Congress intended with respect to members of the Puyallup Tribe that land originally allotted as permanent homes could be sold.[4]

Over the years, the courts have consistently recognized the legitimacy of the sale of allotment land to non-Indians. *See, e.g., Blake v. Arnett*, 663 F.2d 906, 911 (9th Cir. 1981). *See also Montana v. United States*, 450 U.S. 544, 559 (1981); *Brendale v. Confederated Yakima Indian Nation*, ___ U.S. ___, 109 S. Ct. 2994, 3010-11 (1989).

The fact that much of the Puyallup Reservation has been sold to non-Indians is well recognized. In *United States v. Kopp, supra*, at 110 F. 165, the court observed in 1901 that a "considerable part of the reservation" had been sold under the terms of the 1893 Act, 27 Stat. 633. In *Puyallup Tribe v. Department of Game*, 433 U.S. 165 (1977), at 174, this Court recognized:

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[4]Petitioners assert that the 1938 sale of the allotment land to a non-Indian was technically defective in that it was not approved by the Puyallup Land Commission pursuant to 27 Stat. 633. Pet. 21. The Commission was abolished, however, in 1896. 29 Stat. 341. The Act of 1904 removed all restrictions on alienation of allotments. 33 Stat. 565.

> Article II of the Treaty of Medicine Creek provided that the Puyallup Reservation was to be "set apart, and, so far as necessary, surveyed and marked out for their exclusive use" and that no "white man [was to] be permitted to reside upon the same without permission of the tribe and the superintendent or agent." It is argued that these words amount to a reservation of a right to fish free of state interference. Such an interpretation clashes with the subsequent history of the reservation and the facts of this case. *Pursuant to two Acts of Congress, 27 Stat. 633, and c. 1816, 33 Stat. 565, the Puyallups alienated, in fee simple absolute, all but 22 acres of their 18,000-acre reservation.* * * *

(Emphasis added.)

Puyallup Tribe v. Port of Tacoma, 717 F.2d 1251 (9th Cir. 1983), *cert. denied*, 465 U.S. 1049 (1984), also recognized that the allotments conveyed title to the individual Indians and that most of the Puyallup reservation has been sold. 717 F.2d at 1254.

Petitioners argue that 27 Stat. 633 (1893), limiting alienation restrictions to ten years, does not apply to patented lands, but only to land not needed for permanent homes. Pet. 17-19. This simply is inconsistent with a careful reading of the statute. The statute provides that allotment land not selected for immediate sale by the Puyallup Indian Commission could be alienated after ten years. Petitioners' assertions here are also contrary to how the statute was interpreted both in 1901 in *Kopp* and in the more recent *Puyallup Tribe* cases cited above.

D. Congress Was Well Within Its Power to Remove Restraints on Alienation of Puyallup Allotments.

The language of the Medicine Creek Treaty, the subsequent legislative acts, and the actual sale of most of the Puyallup Reservation demonstrate the intent that allotted lands could eventually be sold. Even if the legislative acts which permitted the alienation of land allotted to Puyallup Indians are inconsistent with the Treaty, as petitioners ar-

gue they are, Congress can unilaterally change treaties. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903); *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977). The Congressional acts specifically allowing alienation of lands allotted to Puyallup Indians show clear Congressional intent to permit such transactions.

The removal of restrictions on alienation by Congress is not a violation of the Fifth Amendment to the U.S. Constitution as petitioners contend. Pet. 22-23. Indian allottees received greater use of their property, not less. *Choate v. Trapp*, 224 U.S. 665 (1912), does not support petitioners' argument, Pet. 22, that it is unconstitutional for Congress to remove restraints on alienation. Rather, the court held that Congress, dealing with tribes in Oklahoma, could remove restraints on alienation, allowing allotment land to be sold. What the court held to be improper was the removal of tax exemption status at the same time. 244 U.S. at 568.

Contrary to the assertions of the petitioners, both the Treaty of Medicine Creek and subsequent federal legislation allowed the sale of the subject property. The chain of title is not in dispute. The Ninth Circuit Court of Appeals correctly affirmed the ruling of the district court that the State of Washington is the legal owner of the subject property.

II. The United States Is a Necessary Party Which Cannot Be Joined.

Petitioners argue that if their interpretation of 27 Stat. 633, limiting restraints on alienation of Puyallup allotments to ten years, is not correct, then that statute is an unconstitutional impairment of a vested right. Pet. 22-23. They now allege that they were deprived of their property rights by "illegal U.S. Government means and devises . . . ." Pet. 3.

The Ninth Circuit did not need to deal with the issue of whether the United States is a necessary party. It, as did the district court, squarely rejected petitioners' argument

that removal of restraints on alienation is an unconstitutional impairment of rights. 911 F.2d at 345; Pet. A-24, A-30. However, petitioners are faced with the dilemma that if they are correct, the United States is a necessary party. 25 U.S.C. § 345. (Appendix A-6.) The United States cannot be joined, however, because any statute of limitations has long since run. *Wardle v. Northwest Investment Co.*, 830 P.2d 118 (8th Cir. 1987). Further, this is in effect a takings claim, one which cannot be brought directly against the United States. *See United States v. Mottaz*, 476 U.S. 834 (1986).

Petitioners seek to circumvent their failure to join the United States below by serving a copy of their petition upon the Solicitor General, purporting to be merely complying with Rule 29.4(b). Pet. 26. This, however, does not cure their error.

III. Petitioners' Claims Are Time Barred.

Assuming that there could be a legal basis for petitioners' claims, their claims are subject to state law defenses. 25 U.S.C. § 347. (Appendix A-6-7.)

It was not necessary for the Ninth Circuit to consider these defenses. 911 F.2d at 345, Pet. A-24-5. This Court may, of course, affirm on any issue raised below. *Dowridge v. Williams*, 397 U.S. 491, 496 n.6 (1970). Petitioners' challenge to the 1938 sale is barred by Washington State's ten-year statute of limitations for actions of this nature. Revised Code of Washington 4.16.020(1). (Appendix A-7.)

Petitioners' claims are barred by adverse possession. They and their relatives have lived adjacent to the Washington State University property since the initial allotment. *See Begay v. Albers*, 721 F.2d 1274, 1279 (10th Cir. 1983); *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984).

Petitioners' claims are barred by laches. They offer no explanation for bringing this action 50 years after the property was sold. *See Lemieux v. United States*, 15 F.2d 518 (8th Cir. 1926); *Little Bill v. Swanson*, 64 Wash. 650, 117 P. 481 (1911).

CONCLUSION

For the reasons given above, the Petition for a Writ of Certiorari should be denied.

DATED this 22nd day of February, 1991.

Respectfully submitted,

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APPENDIX

TREATY PROVISIONS

Medicine Creek Treaty of 1854 (10 Stat. 1132)

ARTICLE VI

The President may hereafter, when in his opinion the interests of the Territory may require, and the welfare of the said Indians be promoted, removed them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands. And he may further, at his discretion, cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President, and payment be made accordingly therefor.

Treaty With the Omahas of 1854 (10 Stat. 1043).

ARTICLE 6

The president may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family

of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent from such person or family have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. And the residue of the land hereby reserved, or of that which may be selected in lieu thereof, after all of the Indian persons or families shall have had assigned to them permanent homes, may be sold for their benefit, under such laws, rules or regulations, as may hereafter be prescribed by the Congress or President of the United States. No State legislature shall remove the restrictions herein provided for, without the consent of Congress.

FEDERAL STATUTES INVOLVED

23 Stat. 76, 88-89. Appropriation Act of July 4, 1884.

Three thousand dollars or so much thereof as may be necessary to enable the President to cause to be surveyed such portion of the Puyallup Reservation in Washington Territory into lots as he may deem advisable and direct, and the same assigned to such individual Indians or families of such reservation as are willing to avail themselves of the privilege and will locate on the same as permanent homes in accordance with the terms of Article VI of the Treaty made on December twenty-sixth, eighteen hundred and fifty-four, and ratified by the Senate March third, eighteen hundred and fifty-five.

27 Stat. 633. Puyallup Indian Commission Act of March 3, 1893.

That the President of the United States is hereby authorized immediately after the passage of this act to appoint a commission of three persons, and not more than one of whom shall be a resident of any one State, and it shall be the duty of said commission to select and appraise such portions of the allotted lands as are not required for homes for the Indian alotees; and also that part of the agency tract, exclusive of the burying ground, not needed for school purposes, in the Puyallup Reservation, in the State of Washington. And if the Secretary of the Interior shall approve the selections and appraisments made by said commission, the allotted lands so selected shall be sold for the benefit of the allottees, and the agency tract for the benefit of all the Indians, after due notice at public auction at not less than the appraised value for cash, or one-third cash, and the remainder on such time as the Secretary of the Interior may determine, to be secured by vendor's lien on the property sold.

It shall be the duty of said commission, or a majority of them, to superintend the sale of said lands, ascertain who are the true owners of the allotted lands, have guardians duly appointed for the minor heirs of any deceased allottees, make deeds of the lands to the purchasers thereof, subject

to the approval of the Secretary of the Interior, which deeds shall operate as a complete conveyance of the land upon the full payment of the purchase money; and the whole amount received for allotted lands shall be placed in the Treasury to the credit of the Indian entitled thereto and the same shall be paid to him in such sums and at such times as the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, shall direct: *Provided*, That the portion of the agency tract selected for sale shall be platted into streets and lots as an addition of the City of Tacoma, and sold in separate lots, in the same manner as the allotted lands, and the amount received therefor, less the amount necessary to pay the expenses of said commission, including salaries shall be placed to the credit of the Puyallup band of Indians as a permanent school fund to be expended for their benefit: *And provided further*, That the Indian allottees shall not have power of alienation of the allotted lands not selected for sale by said Commission for a period of ten years from the date of the passage of this act and no part of the allotted land shall be offered for sale until the Indian or Indians entitled to the same shall have signed a written agreement consenting to the sale thereof, and appointing said commissioners, or a majority of them, trustees to sell said land and make a deed to the purchaser thereof; and no part of the agency tract shall be sold until a majority of said Indians shall consent thereto in a written agreement, which shall also constitute said commissioners, or a majority of them, trustees to sell said land, as directed in this act, and make deeds to the purchaser for the same. The deeds executed by said commission shall not be valid until approved by the Secretary of the Interior, who is hereby directed to make all necessary regulations to carry out the purposes of the foregoing provisions. The proceeds arising from the sale of the allotted lands shall be placed in the Treasury to the credit of the respective allottees, and the net proceeds of the agency tract, after paying the expenses of said commission in the appraisment and sale of said lands, and reimbursing the United States for the amount advanced to said commission, shall be placed in the Treasury of the United States to

the credit of all said Indians, and the said sums shall draw interest at the rate of four per centum per annum, and the income shall be annually expended for the benefit of said Indians, under the direction of the Secretary of the Interior: *Provided*; That an amount not exceeding one tenth of the principal sum may be expended for their benefit during any fiscal year, if deemed necessary by the Secretary of the Interior: *Provided further*, That the entire expense herein incurred shall be apportioned by the Secretary of the Interior pro rata between the several allottees and the owners of the tribal tract; and the Secretary of the Interior may in his discretion designate one member of said Commission to superintend the execution of any of the requirements of said Commission herein provided for.

And the sum of twenty thousand dollars or so much hereof as may be necessary, is hereby appropriated for the purpose of defraying the expenses of said commission, to be reimbursed to the United States out of the proceeds of the sale of that portion of the agency tract, to be reimbursed to the United States out of the proceeds of the sale of that portion of the agency tract, to be immediately available.

33 Stat. 565. Act Confirming Removal of Restrictions Upon Alienation of Puyallup Indian Allotted Land of April 28, 1904.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of Congress approved March third, eighteen hundred and ninety-three (Twenty-seventh Statutes, page six hundred and thirty-three), authorizing the sale of the Puyallup allotted lands, with restriction upon alienation "for a period of ten years from the date of the passage" thereof, shall be taken and construed as having expressed the consent of the United States to the removal of restriction upon alienation by said Puyallup Indians to their allotted lands from and after the expiration of said period shall be given effect of having been made without any restrictions upon the power of the allottee to alienate his land.

25 U.S.C. § 345

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands now held by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases.

25 U.S.C.§ 347

In all actions brought in any State court or United States court by any patentee, his heirs, grantees, or any person claiming under such patentee, for the possession or rents or profits of lands patented in severalty to the members of any tribe of Indians under any treaty between it and the United States of America, where a deed has been approved by the Secretary of the Interior to the land sought to be recovered, the statutes of limitations of the States in which said land is situate shall be held to apply, and it shall be a complete defense to such action that the same has not

been brought within the time prescribed by the statutes of said State the same as if such action had been brought for the recovery of land patented to others than members of any tribe of Indians.

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The said Indians who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed.

All deeds, conveyances, encumbrances or transfers of any nature and kind executed by any Indian, or in any manner disposing of any land, or interest therein, shall be by deed executed in the same manner as prescribed for the execution of deeds conveying real estate, or any interest therein, except that the same shall in all cases be acknowledged before a judge of a court of record. In taking said acknowledgment, the said judge shall explain to the grantor the contents of said deed or instrument, and the effect of the signing or execution thereof, and so certify the same in the acknowledgment, and before the same shall be admitted to record shall duly examine and approve the said deed or other instrument.

This act shall take effect and be in force from and after the consent to such removal of the restrictions shall have been given by the congress of the United States.

RCW 4.16.020(1)

For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.